

REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA

A REVIEW OF THE STATE DEPARTMENT OF EDUCATION'S
AUTHORIZATION OF PRIVATE POSTSECONDARY
EDUCATIONAL INSTITUTIONS



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Kurt R. Sjoberg
Acting Auditor General

November 27, 1989

P-869

Honorable Elihu Harris, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 2148
Sacramento, California 95814

Dear Mr. Chairman and Members:

We reviewed the State Department of Education's operations regarding the approval and authorization of private postsecondary educational institutions (institutions). During our review, we found that the Private Postsecondary Education Division (division) does not consistently maintain sufficient documentation to allow us to determine whether it complies with current law for reviewing institutions. Further, for those occasions when we found sufficient documentation to test the division's compliance with review requirements, we found that the division does not always comply with the required time frames for reviewing institutions. Finally, the division uses its own guidelines, which have not been adopted as regulations, to review institutions seeking approval or authorization.

Background

Chapter 1202, Statutes of 1977, was enacted to encourage privately supported education and to protect the integrity of the degrees and diplomas conferred by privately as well as publicly supported educational institutions. This legislation was named the Private Postsecondary Education Act of 1977 (act).

The act created the Council for Private Postsecondary Educational Institutions (council) to provide leadership and direction in the development of private postsecondary education and to maintain private control and autonomy in the administration of private postsecondary schools and colleges. The council consists of fifteen members including the superintendent of public instruction (superintendent) or his or her representative. The remaining members are appointed by the superintendent, the Senate Rules Committee, or the speaker of the Assembly. In addition, the directors of the Department of Consumer Affairs, the Employment Development Department, and the California

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Postsecondary Education Commission or their appointees are nonvoting, ex-officio members of the council. The council advises the superintendent on the regulation of private postsecondary educational institutions.

The division, within the Specialized Programs Branch of the State Department of Education, regulates privately supported educational institutions in the State and is the administrative arm of the council. With its current 34 staff positions, including a director, 2 assistant directors, and 11 consultants, the division oversees over 2,500 institutions with an annual enrollment of over 500,000 students.

The division's budget for fiscal year 1988-89 is approximately \$2.5 million. The largest source of the division's revenue (64 percent) is fees collected from institutions seeking approval or authorization to operate in the State. The division also receives revenue from federal reimbursements for reviewing and approving training courses for veterans (33 percent), and it receives charges assessed to the Student Tuition Recovery Fund (which reimburses students for prepaid but unused tuition if the institution closes before the students complete their courses of study). The division does not receive revenues for its budget from the State's General Fund.

The Division's Regulatory Responsibilities

The act specifies that no institution may issue, confer, or award degrees or offer courses of education in California without approval or authorization from the superintendent. The superintendent has delegated the responsibility for approving and authorizing institutions to the division. The division reviews, approves, and authorizes a variety of institutions ranging from accredited colleges, which confer degrees, to institutions that offer courses designed to develop or improve occupational skill, knowledge, or ability. As a part of its review, the division is responsible for ensuring that the institutions conferring degrees, diplomas, and certificates either are accredited by a national or regional accrediting agency or are approved or authorized by the superintendent. Institutions that receive approval from the superintendent are comparable to accredited institutions, while those receiving authorization meet other specific standards specified by the State.

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Institutions seeking approval or authorization to operate in California file applications with the division. The division then determines the institution's eligibility by reviewing the application to determine whether the institution meets standards in areas such as financial stability, faculty qualifications, and facility adequacy. In addition, depending upon the type of institution, the division's review may also include an on-site inspection by a review committee. After the division has completed its assessment of the institution, it submits its recommendations to the superintendent either to approve or deny the institution's application to operate.

Chapter 1307, Statutes of 1989

Chapter 1307, Statutes of 1989, repeals the Private Postsecondary Education Act of 1977 and establishes the Council for Private Postsecondary and Vocational Education. Beginning January 1, 1991, this new council will be responsible for approving and regulating private postsecondary and vocational educational institutions and for developing state policies for private postsecondary and vocational education. The new council will comprise 15 members, who will be appointed by the governor, the Senate Rules Committee, and the speaker of the Assembly. This council will also have 5 nonvoting, ex-officio members. The new council's members will be appointed by July 1, 1990.

The purpose of this legislation is to effectively integrate private postsecondary education into all aspects of California's educational system and to foster and improve the educational programs and services of these institutions while protecting the citizens of the State from fraudulent or substandard operations. For example, this legislation will ensure minimum standards of instructional quality and institutional stability for all students in all types of these institutions. It will also prohibit the granting of false or misleading educational credentials.

Chapter 1307, Statutes of 1989, states that all of the division's civil service employees will be transferred to the council on January 1, 1991. In addition, this legislation reduces the number of approved institutional categories by eliminating the authorized category.

Scope and Methodology

The purpose of this audit was to review the division's operations to determine whether it is following established rules and regulations when approving or denying the operations of private postsecondary educational institutions and to review and evaluate the division's staffing. Also, to determine the department's responsiveness to inquiries, we reviewed a random sample of 60 student complaints that were submitted to the division during fiscal year 1988-89.

We limited our review to institutions that require action such as an on-site inspection rather than just verification of the accuracy of affidavits submitted by institutions. We reviewed 9 of the 17 regionally accredited out-of-state institutions that were authorized to operate under Section 94310.1(b) of the Education Code, and we found few weaknesses in the division's process for reviewing these institutions. In addition, we reviewed a random sample of files for four types of institutions, including approved, authorized, theological, and vocational institutions that offer degrees, diplomas, or certificates, to determine the division's compliance with existing laws and regulations when it reviews applications for approval or authorization.

We were unable to assess the consistency of the review of institutions among the division's consultants because their work was assigned by type of institution until November 1987 when the division began assigning institutions to consultants according to geographical regions. Because many of the reviews for approval or authorization occurred before 1987, the consultant currently assigned to an institution may not have been responsible for the most recent review of the institution.

Because the division has not requested additional staff, does not have staffing standards, and has not identified the extent of its backlog, we cannot assess the adequacy of its current staffing.

The Division Does Not Sufficiently Document Its Reviews of Private Postsecondary Educational Institutions

Proper management requires that the division maintain sufficient documentation to allow a review of its compliance with existing law for approving and regulating institutions. In addition, existing law imposes certain time frames on the division when it reviews

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institutions for approval or authorization to operate in the State. The law also requires that the division select appropriate individuals to participate in the reviews and the decision-making process.

We reviewed a total of 103 files for approved, authorized, theological, and vocational institutions. In these files, we noted insufficient documentation, noncompliance, and compliance with the Education Code and the California Code of Regulations. Table 1 presents the results of our testing for each of the four types of institutions. Because a file could have instances of each or any combination of insufficient documentation, noncompliance, and compliance, it could be counted in more than one of the categories. As a result, the total number of files in each category could be greater than the total number of files reviewed.

TABLE 1
**FILES WITH OCCURRENCES OF INSUFFICIENT DOCUMENTATION,
NONCOMPLIANCE, AND COMPLIANCE**

	<u>Insufficient Documentation</u>	<u>Noncompliance</u>	<u>Compliance</u>	<u>Total Files Reviewed</u>
Approved institutions	18 (90%)	10 (50%)	18 (90%)	20
Authorized institutions	25 (100%)	22 (88%)	24 (96%)	25
Theological institutions	9 (100%)	6 (67%)	9 (100%)	9
Vocational institutions	47 (96%)	20 (41%)	22 (45%)	<u>49</u>
Total				<u>103</u>

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Requirements Common to Institutions

In its review of institutions seeking approval or authorization to operate in the State, the division has requirements in the Education Code and the California Code of Regulations that are common to all four types of institutions. These common areas are impaneling a review committee, conducting an on-site inspection, issuing a final report, and taking action to either grant or deny the approval or authorization to operate.¹

After an institution submits an application for approval or authorization to operate, the division must impanel a review committee within 90 days. During our review, we were unable to determine whether the division always complied with this requirement because the files lacked sufficient documentation. Further, for those files adequately documented in this area, we found instances of noncompliance with this requirement. For example, in 10 of the 25 authorized institution files we reviewed, the division did not document the date that the committee was impaneled. In addition, of the 15 files for which we could determine the date the committee was impaneled, the division did not meet the 90-day requirement for impaneling the committee in a total of 5 (33 percent) files. For these 15 files, the division impaneled the committees in a range of 6 to 186 days.

When selecting the review committee, the division must include individuals with qualifications specified by the Education Code. The number of individuals varies from one for the review of vocational institutions to an unlimited number for the review of institutions seeking approval. During our review of the files for authorized institutions, we found that the division did not maintain sufficient documentation for us to determine if the division impaneled the appropriate individuals for the review committees. Specifically, in each of the 25 files we reviewed, the division could not provide us with evidence that any of the committee members were selected from a list of names submitted by the council as required by Section 94310.3(b)(2) of the Education Code. According to the

¹The requirement for impaneling a review committee does not apply to vocational institutions. Reviews of vocational institutions are conducted by a representative of the superintendent.

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division's director, the list of names approved by the council was apparently taken by an employee after he resigned his position with the division.

After the division receives an application from an institution, it is required to conduct an on-site inspection of the institution. For vocational institutions, the division must make these inspections within 30 days. For authorized and theological institutions, the division must make an on-site inspection within 30 days after impaneling the review committee; for approved institutions, this requirement is 90 days.

Of the 49 files for vocational institutions we reviewed, we could not determine if the division complied with the 30-day requirement for 47 (96 percent) of the institutions because documentation is missing. In addition, of the 20 adequately documented files we reviewed for approved institutions, the division did not meet the 90-day requirement for 7 (35 percent) of the institutions. From our review of the 2 vocational files that contain documentation for both the application and visitation dates, the division conducted inspections 23 days after receiving an application from these institutions.

After the review committee has completed its on-site inspection, it must prepare a final report of its recommendations either within 30 days after the review of approved and theological institutions or within 30 days after receiving additional information from an institution seeking authorization to operate. For 16 of the 20 files we reviewed for approved institutions, we could not determine whether the division complied with this requirement because the final reports are not dated. Further, for 6 of the 25 files for authorized institutions we reviewed for which the division conducted on-site inspections, the division did not issue final reports within 30 days after receiving further information from the institutions.

Of the files we reviewed containing sufficient documentation for approved and theological institutions, the division prepares final reports from 0 to 189 days after the on-site inspection. The division prepares final reports for authorized institutions from 27 to 454 days after receiving further information from the institution.

After the committee completes the final report, it is submitted to the superintendent. The superintendent is required to either grant or deny the institution's approval or authorization to operate in the State.

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Depending on the type of institution reviewed, this action must occur within 30 to 90 days after the division receives the report from the review committee.

Of the 20 files we reviewed for approved institutions, we could not determine if the superintendent complied with the 30-day requirement for 16 of the institutions because either the final report is not dated or the date of the superintendent's approval or denial is not in the file. In addition, of the 25 files we reviewed for authorized institutions, the superintendent did not take action within the 30-day period in six instances. During our review of the authorized and approved institutions, we found that the superintendent approves or denies these institutions from 0 to 192 days after receiving the final report.

We noted another instance of insufficient documentation in our attempt to review the division's files of complaints that students had submitted during fiscal year 1988-89. We randomly selected 299 complaints that were filed with the division; however, of the 299 files, the division could locate only 60. The data from our review of the 60 complaints is presented in the attachment to this letter.

According to the division's director, the division does not have sufficient staffing to perform its duties. However, at the time Chapter 1307, Statutes of 1989, was signed into law, the division had not requested additional staff to handle its backlog. While the division's initial priority was to establish staffing standards as well as to identify its case backlog and the resources required to accomplish its tasks, the division dropped this plan when Chapter 1307, Statutes of 1989, was signed into law.

Because the division does not maintain sufficient documentation to determine compliance and because it does not always comply with time requirements for the review of institutions seeking approval or authorization to operate in the State, the division cannot ensure that it adequately carries out its responsibilities for approving and authorizing institutions as required by current law.

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The Division Has Not Developed
Certain Required Regulations for the
Review of Private Postsecondary
Educational Institutions

Section 11347.5 of the California Government Code states that no state agency shall attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule that is a regulation unless it has been adopted through the Office of Administrative Law (OAL) as a regulation. Regulations are adopted by state agencies to implement, make specific, or interpret statutes enacted by the Legislature.

The OAL reviews proposed regulations. If the OAL approves the proposed regulations, they are filed with the secretary of state and generally become law effective 30 days after the date of filing. If the OAL disapproves regulations, they are returned to the agency with a letter specifying the reasons for the denial. The agency can then revise and resubmit the regulations, appeal the disapproval to the governor within 10 days, or withdraw the regulations.

In 1986, the Private Postsecondary Act of 1977 was amended. As a result, the criteria changed for institutions seeking authorization under Section 94310.3 of the Education Code. Although the division has developed and received OAL approval for some regulations pertaining to time frames for reviewing the institutions, it currently uses its guidelines, unapproved by the OAL, to determine an institution's compliance with standards specified by the Education Code related to areas such as facilities, financial stability, faculty, and curriculum. It has done so since 1985. According to the current division director, the division had attempted to develop regulations for the review of these institutions in fiscal year 1985-86. However, because of extensive opposition from interested parties, the division stopped work on the regulations. After July 1987, the division again started to develop regulations for reviewing these institutions.

The division filed a notice of public hearing on September 30, 1988, thereby beginning the process for obtaining the OAL's approval of its proposed regulations for reviewing institutions seeking operating authorization under Section 94310.3 of the Education Code. The division subsequently submitted these proposed regulations to the OAL for approval on June 22, 1989. After reviewing them, the OAL issued a disapproval on July 24, 1989, because the proposed regulations did not comply with the required Government Code standards. Specifically, the

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division failed to meet the required clarity standard because the text of its proposed regulations was unclear and contained terms and phrases that were not easily understood or were ambiguous. The proposed regulations also did not meet the Government Code standard for necessity because the division failed to provide sufficient evidence of the need for certain provisions of the proposed regulations. Additionally, the proposed regulations did not comply with the Government Code standards for providing sufficient references to the section of the Education Code that the regulations are intended to implement. Further, the proposed regulation file that the division submitted to the OAL did not contain all the required documents, and the division failed to respond to comments made by the public regarding the proposed regulations.

Although Section 94310.1(b) of the Education Code required the division to develop regulations by March 1, 1987, for the review of regionally accredited out-of-state institutions seeking authorization under this section, the division has only recently completed a draft of these regulations. As of November 13, 1989, it had not yet started the process of seeking OAL approval.

We requested a Legislative Counsel opinion regarding the division's use of guidelines rather than regulations when reviewing institutions for approval or authorization to operate in the State. According to the Legislative Counsel, the guidelines are not enforceable and would merit no weight in determining whether a denial or authorization of an institution is valid. Instead, the courts would apply relevant statutes and regulations when determining whether a reversal of the division's decision was required.

Conclusion

The division does not always maintain sufficient documentation to allow us to determine whether it complies with current law for reviewing institutions seeking approval or authorization to operate in the State. Additionally, where documentation is sufficient, we found that the division has not always complied with time requirements for the review of these institutions. As a result, the State has no assurance that the division is adequately fulfilling its responsibilities for approving and authorizing institutions as required by current law. In addition, because the division has not developed staffing standards, or identified the extent of its case backlog, we cannot assess the adequacy of the division's current staffing.

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We also found that the division uses its guidelines, rather than regulations that are enforceable, to review institutions seeking approval or authorization to operate in the State. Further, according to the Legislative Counsel, these guidelines would merit no weight in a court of law's determination of whether a denial or authorization to operate in the State is valid.

Recommendations

To ensure that the division fulfills its responsibility for approving and authorizing institutions to operate in the State as specified by current law, and to ensure that it has complete records to turn over to the Council for Private Post Secondary and Vocational Education, the division should take the following actions:

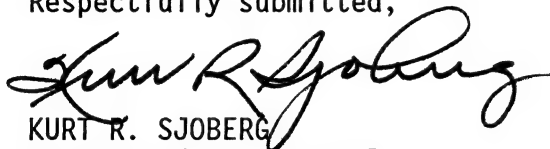
- Identify the extent of its case backlog, determine the current status of files for institutions, and take the necessary steps to ensure that the files are current and complete.
- Implement recordkeeping procedures to ensure that sufficient documentation is maintained.
- Review, within current time frame requirements, institutions seeking approval or authorization to operate in the State.

To ensure that the division's decisions for granting or denying an institution's approval to operate in the State are enforceable and to comply with the Government Code, the division should develop regulations for reviewing institutions and should obtain approval from the OAL.

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We conducted this review under the authority vested in the auditor general by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kurt R. Sjoberg", written in a cursive style.

KURT R. SJOBERG
Acting Auditor General

Attachment

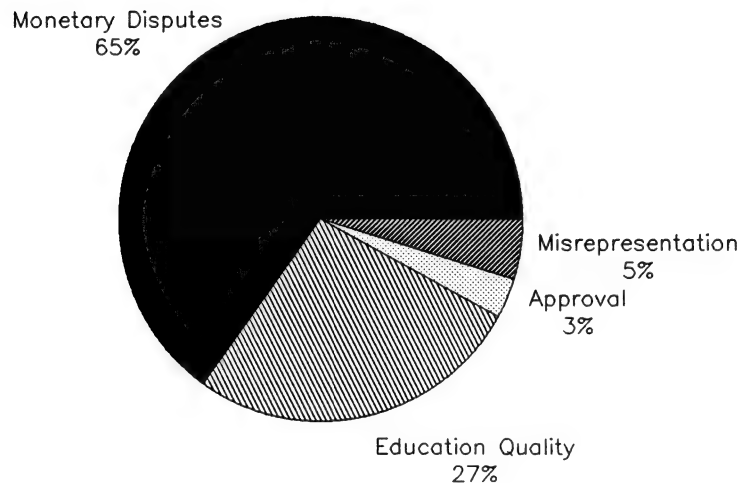
The State Department of Education's response to this report
The Office of the Auditor General's comments

A REVIEW OF STUDENT COMPLAINTS

To determine the division's responsiveness to complaints, we reviewed a random sample of 60 student complaints that were submitted to the division for resolution during fiscal year 1988-89. To obtain a sample of files, we submitted a list of 299 complaint files to the division. Of the 299 complaint files, the division could locate only 60. During our review, we identified four categories of complaints: those involving monetary disputes, quality of instruction, questions of approval, and misrepresentation. Chart A-1 presents the percentage of complaints by category.

CHART A-1

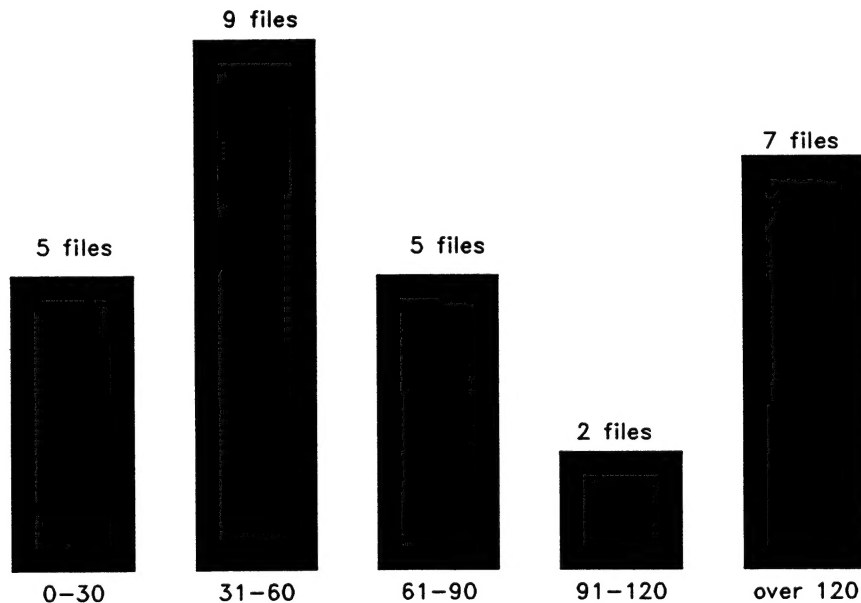
TYPES OF COMPLAINTS IN 60 FILES



Although current law does not specify time requirements for the division to resolve student complaints, the division has an informal policy to resolve complaints within 30 days, either by making a determination about the complaint or by referring it to another agency. Based upon our review, we determined that the division has taken from 11 to 376 days to resolve 28 (47 percent) of the complaints. Chart A-2 shows the number of days the division took to settle the 28 resolved complaints. Of the 32 complaints still pending, 9 were submitted to the division before January 1989.

CHART A-2

DAYS TO RESOLVE COMPLAINTS





CALIFORNIA STATE DEPARTMENT OF EDUCATION

Bill Honig**721 Capitol Mall; P.O. Box 944272****Superintendent****Sacramento, CA 94244-2720**

of Public Instruction

November 21, 1989

Kurt Sjoberg, Acting Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

P-869

Dear Mr. Sjoberg:

Thank you for the opportunity to review and comment on your draft letter entitled "A Review of the State Department of Education's Authorization of Private Postsecondary Educational Institutions." We would like to clarify some of the information reported in your letter.

Documentation

We recognize the problems you have quantified regarding documentation of reviews. We would like to comment on your discussion regarding staffing and the division's efforts to eliminate its backlog. The report implies that the division is not working on its backlog or attempting to obtain resources to conduct its activities. During the audit, the division director stated that at the time that Chapter 1307, Statutes of 1989 was signed into law, division staff assigned to developing staffing (workload) standards and identifying backlog and resources required to accomplish division tasks were directed to apply all of their efforts to reducing to the greatest degree possible the division backlog of work and improving division files and filing systems. The division staff stopped analyzing the division backlog and resource needs to actually work on reducing the backlog.

Development of Regulations

As noted in your report, the regulations formulated from the standards recommended by the Council for Private Postsecondary Educational Institutions for reviewing institutions seeking operating authorization under Education Code Section 94310.3 did meet extensive opposition when proposed in 1985-86. The division resumed the adoption process for these regulations in July 1987. These regulations are to be resubmitted to the Office of Administrative Law (OAL) by November 29, 1989 with the corrections requested by the OAL in their July 1989 disapproval letter.

We are concerned about the presentation, in your Conclusion, of the Legislative Counsel's opinion concerning the status of the guidelines being used by the division in reviewing institutions seeking authorization to operate in the State. We agree that the guidelines, as pending regulations, do not have the force of law. However, your statement in the last paragraph of the Conclusion may be misleading and could generate unnecessary litigation.

Kurt Sjoberg
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The Legislative Counsel said that a court would give no weight to the guidelines in determining the validity of the division's decisions, but would apply the standards set out in the statutes (Education Code sections 94310.2 and 94310.3). In this respect your conclusion is incomplete. If the division's decision to grant or deny authorization to an institution is supported by sufficient competent evidence, it could be sustained by a court. ①*

Therefore, any institution bringing suit regarding the grant or denial of authorization would not have their position strengthened merely because the guidelines used by the division have not yet been approved by OAL. As indicated in your report, OAL's disapproval of the guidelines was not based on their substantive content but on procedural matters relating to adoption of regulations. ②

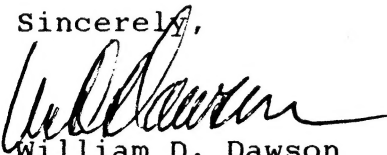
Response to Recommendations

The Department has already taken steps to ensure that the division fulfills its responsibilities, and to ensure that it has complete records to turn over to the Council for Private Postsecondary and Vocational Education. The division is in the process of identifying its case backlog with the intention of completing as many backlogged and current visits as possible before transfer of its functions to the new council on January 1, 1991. On November 1, 1989, the division employed four seasonal clerks and plans to employ four more for the specific purpose of ensuring that its files are as current and complete as possible.

The division has already implemented some new procedures, for renewals and fee collection and will implement more to ensure that sufficient documentation is maintained on all of its functions. In addition, the division continues to attempt to review private postsecondary educational institutions within the required time frames. Finally, executive management has taken action to mobilize Department resources to support the division.

We commend the Office of the Auditor General and the particular audit team that conducted this review on their professionalism and personal conduct in difficult circumstances.

Sincerely,



William D. Dawson
Executive Deputy Superintendent

*The Office of the Auditor General's comments on specific points in this response begin after the State Department of Education's response.

**THE OFFICE OF THE AUDITOR GENERAL'S COMMENTS
ON THE RESPONSE FROM THE STATE DEPARTMENT OF EDUCATION**

- ① The focus of this finding is the effect of the division's not developing certain regulations for the review of institutions; therefore, our conclusion focuses on this issue. In addition, in the paragraph before the conclusion, we clearly state that the courts would apply relevant statutes and regulations when determining whether a reversal of the division's decision was required.
- ② Text changed to clarify that the OAL's disapproval of the proposed regulations was due to the division's noncompliance with the Government Code standards.